

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1310 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MADINABEN JALALUDDIN KADRI

Versus

INAYATALI MAHEBUBMIYAN SAIYED

Appearance:

MR SR SHAH for Petitioner

MR HB SHAH for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 06/10/97

ORAL JUDGEMENT

The petitioner herein is the original plaintiff and the respondent herein is the original defendant in Regular Civil Suit No.150 of 1982 in the Court of learned Civil Judge (J.D.), Kheda. She filed the Suit for permanent injunction restraining the defendant from disturbing her possession of the suit premises (one Ordi) and from carrying on any illegal act or activity in the

suit premises. Her case before the trial Court was that she was the respondent's - tenant in respect of the suit premises and she was originally paying rent of Rs.11/p.m. which was subsequently raised to Rs.18/p.m. On 4.5.1979 the respondent purchased the suit land (along with the suit premises) and since then he has been harrasing the petitioner. Apprehending that her possession might be disturbed she filed Suit being Regular Civil Suit No.150 of 1982 in the Court of learned Civil Judge (J.D.), Kheda. The respondent resisted the suit alleging that although the petitioner was tenant of the original owner - Jethalal, at the time of sale of the suit property he was given physical possession of the suit premises by the original owner inasmuch as the petitioner and her husband had handed over the possession of the suit premises to the said previous owner. The respondent further alleged that the petitioner's Suit No.12 of 1980 for fixation of standard rent was also dismissed. The trial Court after framing the necessary issues and recording the evidence decreed the petitioner's Suit as per the Judgment and Decree dated 30.11.1983.

2. The respondent carried the matter in Appeal bearing Civil Appeal No.3 of 1984 in the District Court, Nadiad. Learned Second Extra Assistant Judge, Nadiad, by his Judgment and order dated 22.8.1984 upheld the petitioner's possession, but did not accept her case that she was tenant of the suit premises. He has accordingly allowed the Appeal with modification that the respondent should not take possession of the suit premises in case the petitioner has been inside the premises, without following due procedure of law.

3. The petitioner has under the aforesaid circumstances preferred this Revision Application under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control, Act (for short the Rent Act). I have gone through the Judgments of the Courts below. The salient feature of the rival case of the parties is that whereas the respondent has not produced document of sale which would go to support his say that the original owner had handed over the physical possession of the suit premises to him, the petitioner has also not produced or has not proved notice of attornment as a result of the transaction of sale of the suit premises between the ex-landlord and the present respondent. Under the circumstances the parties would obviously need production of the relevant documents for establishing their rival case. These documents would be material documents and would go to the root of the matter. In that view of the matter it would be absolutely in the interest of justice

to give opportunity to the parties to adduce evidence before the trial Court, more particularly the documentary evidence as referred to hereinabove. If the matter is not accordingly remanded there would be multiplicity of proceedings.

4. Having heard the learned Advocates for the parties, following order is passed :

The Judgments of both the Courts below will stand set aside in so far as adjudication on the question of relationship between the parties as that of tenant and landlord is concerned. The said question will have to be decided afresh after allowing the parties to adduce evidence, more particularly documentary evidence as referred to in this Judgment. The matter is remanded to the trial Court accordingly with a direction to dispose of the same afresh after giving opportunity to the parties as aforesaid.

The trial Court will dispose of the Suit as expeditiously as possible, preferably within a period of six months from the date of receipt of writ of this direction.

Rule made absolute in the aforesaid terms with no order as to cost.

Office to send the writ as well as R & P, if any, immediately to the trial Court.

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